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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/812,581	03/30/2004	Steve Merrill	16628SSUS02U	3235
34645 7590 02/22/2008 JOHN C. GORECKI, ESQ. P.O BOX 553 CARLISLE, MA 01741				
EXAMINER RUBIN, BLAKE J				
ART UNIT 4152		PAPER NUMBER		
NOTIFICATION DATE 02/22/2008		DELIVERY MODE ELECTRONIC		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

john@gorecki.us

### Office Action Summary

**Application No.**

10/812,581

**Applicant(s)**

MERRILL ET AL.

**Examiner**

BLAKE RUBIN

**Art Unit**

4152

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 30 March 2004.  
2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-12 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-12 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☒ The drawing(s) filed on March 30, 2004 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO-8508)  
Paper No(s)/Mail Date \_\_\_\_\_

- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. This action is in response to communications filed March 30, 2004.
2. Claims 1-12 are pending in this application.
3. This application is a continuation in part of U.S. Application No. 10/719,225, filed November 21, 2003, which claims priority to provisional applications 60/508,522, and 60/508,524, both of which were filed on October 3, 2003.

### ***Drawings***

4. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(4) because reference character "14" has been used to designate both a "network" (paragraph [0024], line 3) and "data target" (paragraph [0024], line 13). Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Objections***

5. Claim 4 recites the limitation "the value" in line 2. There is insufficient antecedent basis for this limitation in the claim.

6. Claim 5 recites the limitation "the size," "the transfer," "the importance," "the timing," "the speed," and "the amount of money," in lines 2-4. There is insufficient antecedent basis for these limitations in the claim.

7. Claim 6 recites the limitation "the size," "the transfer," "the timing," "the new transfer," and "the demand," in lines 2-4. There is insufficient antecedent basis for these limitations in the claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

9. Claims 1-12 are rejected under 35 U.S.C. 102(b) as being anticipated by Kirkby et al (U.S. Publication No. 2002/0097747, hereinafter Kirkby).

10. With respect to claim 1, Kirkby discloses a method of negotiating resources (paragraph [0094], lines 19-26) on a switched underlay network (paragraph [0050], lines 1-3), the method comprising the steps of: receiving a request (paragraph [0067], lines 1-4) for scheduled resources (paragraph [0088], lines 3-6) from a requesting entity (paragraph [0067], lines 1-4; *end users or other layers*); ascertaining requesting entity business policy associated with the request (paragraph [0072], lines 14-22); ascertaining switched underlay network business policy associated with the request (paragraph [0092], lines 1-5); and negotiating the request (paragraph [0094], lines 19-22) based on the request (paragraph [0067], lines 1-4), the requesting entity business policy (paragraph [0072], lines 14-22), and the switched underlay network business policy to resolve a negotiated request (paragraph [0094], lines 19-28).

11. With respect to claim 2, Kirkby discloses the method of claim 1, further comprising the step of ascertaining anticipated network conditions associated with the request (paragraph [0058], lines 7-14; paragraph [0064], lines 6-10), and wherein the step of negotiating the request is based additionally on the anticipated network conditions (paragraph [0073], lines 1-14).

12. With respect to claim 3, Kirkby discloses the method of claim 1, wherein the request is underconstrained (paragraph [0057]; *elastic services*), and wherein the negotiated request is also underconstrained (paragraph [0094], lines 19-28).

13. With respect to claim 4, Kirkby discloses the method of claim 1, wherein the requesting entity business policy (paragraph [0072], lines 14-22) includes parameters associated with the value to the entity of having the request fulfilled within at least one of a particular cost structure (paragraph [0026]), a particular time window (paragraph [0003], lines 7-9), and at a particular capacity range (paragraph [0080], lines 11-13).

14. With respect to claim 5, Kirkby discloses the method of claim 1, wherein the requesting entity business policy (paragraph [0072], lines 14-22) includes at least one parameter relating to the size of the transfer (paragraph [0060], lines 4-10), the importance of the transfer (paragraph [0057], lines 3-6; *priority*), the timing of the transfer (paragraph [0003], lines 7-9), the speed of the transfer (paragraph [0003], lines 1-5; *bandwidth*), and the amount of money or other expense associated with the transfer (paragraph [0089], lines 1-9).

15. With respect to claim 6, Kirkby discloses the method of claim 1, wherein the switched underlay network policy (paragraph [0092], lines 1-5) includes at least one parameter relating to the size of the transfer (paragraph [0060], lines 4-10), the timing of the transfer (paragraph [0003], lines 7-9), current and anticipated network conditions (paragraph [0058], lines 7-14; paragraph [0064], lines 6-10), other scheduled transfers (paragraph [0088], lines 3-6), whether the new transfer would displace other scheduled

transfers (paragraph [0080]), and the demand for network resources (paragraph [0054], lines 10-12).

16. With respect to claim 7, Kirkby discloses the method of claim 1, wherein the step of negotiating the request (paragraph [0094], lines 19-22) comprises optimizing scheduling (paragraph [0054], lines 1-4; paragraph [0088], lines 3-6) of the request based on the requesting entity business policy (paragraph [0072], lines 14-22), and the switched underlay network business policy (paragraph [0092], lines 1-5).

17. With respect to claim 8, Kirkby discloses the method of claim 7, further comprising passing the scheduled request (paragraph [0088], lines 3-6) to a data transfer scheduling service for scheduling of the request on the network (paragraph [0088], lines 6-9).

18. With respect to claim 9, Kirkby discloses the method of claim 1, wherein the resources are lambdas (paragraph [0050], lines 1-6).

19. With respect to claim 10, Kirkby discloses a method of handling requests for resources on a switched underlay network (paragraph [0050], lines 1-3), the method comprising the steps of: receiving, by a data transfer scheduling service (paragraph [0088], lines 3-9), an underconstrained request for resources (paragraph [0057]; *elastic services*); passing the underconstrained request for resources to a resource negotiation

service (paragraph [0094], lines 19-22) to enable policy to be implemented to further constrain the request to create a modified request and implement accounting entries associated with the modified request (paragraph [0094], lines 15-16); and returning the modified request to the data transfer scheduling service to be scheduled on the switched underlay network (paragraph [0094], lines 22-33).

20. With respect to claim 11, Kirkby discloses the method of claim 10, further comprising the step of scheduling (paragraph [0088], lines 3-6) the modified request (paragraph [0089], lines 7-17).

21. With respect to claim 12, Kirkby discloses an apparatus for negotiating requests (paragraph [0094], lines 19-22) for switched underlay network resources (paragraph [0050], lines 1-3), the apparatus comprising: a resource negotiation service (paragraph [0094], lines 19-22); a data management service (paragraph [0049], line 5), said data management service being configured to perform network topology discovery (paragraph [0067], lines 1-3), route creation (paragraph [0090], lines 1-10), and path allocation (paragraph [0090], lines 1-10); and a network resource manager (paragraph [0009]), said network resource manager being configured to interface network devices in the switched underlay network (paragraph [0014]) to schedule network resources on the switched underlay network (paragraph [0088], lines 3-9); wherein at least one of the data management service and the network resource manager is configured to schedule



underconstrained requests for the network resources on the switched underlay network (paragraph [0057]; *elastic services*).

22. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- |    |                    |            |              |
|----|--------------------|------------|--------------|
| a. | Takihiro et al     | Patent No. | 6,278,712    |
| b. | Wang               | Pub. No.   | 2003/0161632 |
| c. | Vaid et al         | Patent No. | 6,502,131    |
| d. | Sistanizadeh et al | Patent No. | 6,681,232    |
| e. | Liver et al        | Patent No. | 6,643,699    |

23. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BLAKE RUBIN whose telephone number is (571)270-3802. The examiner can normally be reached on M-R: 7:30-5:00.

24. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nabil El-Hady can be reached on (571) 272-3963. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

25. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should

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you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

BJR  
2/8/08

/Nabil El-Hady/  
Supervisory Patent Examiner, Art Unit 4152